

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
GAIL M. KANE, :
RESPONDENT. : LS0412026REB

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Gail M. Kane
3191 Meadowview Lane
Sturgeon Bay, WI 54235

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Real Estate Board (“Board”). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Gail M. Kane (“Respondent”), date of birth 04/18/40, is licensed in the State of Wisconsin as a real estate broker having license #90-48899. This license was first granted to her on 03/26/97 and is current through 12/31/04.
2. Respondent's last reported home address on file with the Department of Regulation and Licensing (“Department”) is 3191 Meadowview Lane, Sturgeon Bay, Wisconsin.
3. Respondent was the owner of Kane Properties, license number 90-48899. Kane Properties was established as a real estate business entity on 07/01/97 until 05/24/02. Sometime during the summer of 2002, Kane Properties merged with Scott R. Bader Realty D/B/A Coldwell Banker Door County Horizons (#91-834735). This license was first granted to the company on 06/13/95 and is current through 12/31/04.
4. Respondent’s last reported employer address on file with the Department is P.O. Box 100, Fish Creek, Wisconsin.
5. At all times relevant to the facts stated below, Respondent was listed as the managing broker of record for Door County Vacation Rentals LLC (DCVR), license #91-700156. This license was first granted to the company on 05/06/98 and on 12/31/02. Department records indicated that Respondent was hired as the managing broker on 03/09/01.
6. DCVR’s most recent address on file is 49 W Maple Street, Sturgeon Bay, Wisconsin.

7. Sometime around October 2000 or November 2000, Celeste Danek (Danek) purchased the building and assets of DCVR from the previous owner Beverly Wertz. Danek was not a licensed real estate agent. Some of the duties that Danek performed while at DCVR were maintaining DCVR's business operational account and the real estate trust account. Danek was responsible for collecting rent monies DCVR's rent monies.

8. Between 11/20/01 and 07/09/03, the Department received six complaints from owners/clients of DCVR real estate properties alleging that Respondent and DCVR failed to: (1) pay them for rental fees collected, (2) remit security deposits, (3) reduce the terms of their property management agreement to writing.

9. Based upon the information contained in the complaints, the Department opened an investigation.

10. During the Department's investigation, it was discovered that there was approximately \$201,882.05 missing from DCVR's Interest Bearing Real Estate Trust Account (IBRETA).

11. Currently, a criminal investigation is pending against Danek, who worked in the office of DCVR.

12. On or about October 4, 2002, DCVR went out of business.

13. On or about November 6, 2003, DCVR's IBRETA account was closed with a balance of \$0.00.

14. On or about February 10, 2004, a Special Agent from the Department of Justice, Division of Criminal Investigation interviewed the Respondent. Respondent stated that she was the managing broker of record from March of 2001 until October 2002. Respondent stated that there was no formal contract between her and Danek. Respondent stated that her responsibilities at DCVR included attending staff meetings and interviewing prospective owners. Respondent stated that she was not involved with the financial responsibilities but understood that normal duties for a licensed broker included maintaining accounts and running balances. Respondent believed that her normal duties were being handled by other professionals that Danek had hired. Respondent stated that she was compensated \$500.00 per month by Danek. Respondent stated that she received her compensation from DCVR's operations account. Respondent also stated that in August of 2001, she was informed by Danek of the financial problems of DCVR.

15. A review of the files of real estate audits performed by the Department's auditors does not show any audits of DCVR. Respondent had not filed the required Consent to Examine and Audit Trust Account form for DCVR until 04/15/02. On 04/15/02, there was \$4,614.08 remaining in a trust account at F & M Bank of Sturgeon Bay. Also, the last deposit was on 04/15/02. The form shows the trust account records were kept at DCVR's address and that the account was for client funds.

16. To date, four of the six complainants listed in paragraph 8 have had their disputes with DCVR resolved.

17. Respondent has cooperated fully with the Department in the investigation of this matter.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. sec. 452.14.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Wis. Stat. sec. 227.44(5).

3. Respondent has violated:

a. Wis. Admin. Code section RL 18.034(1) by failing within ten (10) days of opening an account to notify the Department of such action;

b. Wis. Admin. Code section RL 18.034(2) by failing within ten (10) days after making changes or closing the account to notify the Department of such action;

c. Wis. Admin. Code section RL 18.036(1) by failing within ten (10) days of opening an account to furnish the Department a Consent to Examine and Audit Trust Account form for the Department to examine and audit all of the broker's real estate trust account records and interest-bearing common trust accounts maintained for client funds;

d. Wis. Admin. Code section RL 18.036(2) by failing within ten (10) days of opening an account to furnish the Department with a form from every depository institution in which the broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the Department, or in the case of interest-bearing common trust accounts maintained for client funds, the Department of Administration;

e. Wis. Admin. Code sections RL 18.09(3)(b) and 24.15 by failing to properly disburse trust funds;

f. Wis. Admin. Code section RL 18.10 by failing to properly keep real estate funds separate from personal funds or other funds; and failing to deposit additional person funds in the broker's real estate trust account within ten (10) business days following receipt of a statement other notification from a depository institution that a service charge has been made against the account for which non-sufficient funds are available in the account;

g. Wis. Admin. Code section RL 18.13 by failing to properly maintain and be responsible for a bookkeeping system;

h. Wis. Admin. Code sections RL 18.14, 24.01(3), 24.03(2)(b), 24.025(1), 24.17(1), by failing to adequately supervise DCVR employee Celeste Danek;

i. Wis. Admin. Code section RL 24.08 by failing to put in writing commitments regarding transactions to the interested parties.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the attached Stipulation is hereby accepted.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Department **ACCEPTS** the **VOLUNTARY SURRENDER OF THE RIGHT TO RENEW** the real estate broker license of Gail M. Kane (#90-48899), effective December 31, 2004 at 11:59 P.M.
2. This Order shall become effective upon the date of its signing.

IT IS FURTHER ORDERED, that files **01 REB 317, 02 REB 095, 02 REB 150, 02 REB 212, 02 REB 237, and 03 REB 164** be, and hereby are, closed as to Gail M. Kane.

Dated this 2nd day of December, 2004.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger
A member of the Board